RULES OF THE SENATE—APPENDIX

SENATE PRECEDENTS RELATING TO CONFERENCES

It is immaterial whether a committee to adjust differences be termed a conference committee or a free conference committee, there being no substantial difference between the two (35 S.J. 3 C.S. 670 (1917)).

A motion having been made to adopt a conference report, a motion to reject the report is not in order (42 S.J. 3 C.S. 163 (1932)).

A conference committee may not be instructed after it has commenced its deliberations (43 S.J. Reg. 1684 (1933); 44 S.J. 3 C.S. 250-252 (1936)).

A motion to adopt a conference committee report on a joint resolution is in order at any time and without a reconsideration of the vote by which it has once been lost (44 S.J. Reg. 1812 (1935)).

A motion to discharge a conference committee and request a new conference committee is in order before the original conference committee has submitted its report (45 S.J. 1 C.S. 44 (1937)).

Even after a conference report has been adopted and the bill as recommended in the report has been enrolled, signed and presented to the Governor, the vote by which report was adopted may be reconsidered, the report rejected, and the differences between the two Houses referred to a new conference committee for adjustment (46 S.J. Reg. 1437 (1939)).

A concurrent resolution to correct a House bill that has been passed by the Senate is in order and requires only a majority vote for adoption (46 S.J. Reg. 1891 (1939)).

Adoption of resolution to recede from Senate amendments to House bill after request made by House for conference committee and request granted but Senate conferees not appointed properly effects an adjustment of differences between two Houses (47 S.J. Reg. 1291 (1941)).

After a bill reaches a stage when the adjustment of the differences between the two Houses on the bill is all that remains to effect its final enactment, either or both Houses may take any action, separately or jointly, which will adjust those differences (47 S.J. Reg. 1291 (1941)).

A conference report may contain any matter germane to original bill if entire text of bill as passed in the two Houses is different (47 S.J. Reg. 2493 (1941)).

PROCEDURE AND PRACTICE IN CONGRESS RELATIVE TO ADJUSTING DIFFERENCES BETWEEN HOUSES

Steps Preliminary to Conference

The Senate cannot act until in possession of the papers (5, 6322, 6518-6522), and when transmitting papers should ask for or agree to conference (5, 6273).

The papers consist of the original engrossed copy of the bill attested by the Clerk of the House or the Secretary of the Senate, the engrossed amendments, and later the conference report signed by the managers.

The managers on the part of the House asking the conference bring the papers to the conference room. At the close of an effective conference the papers change hands, and the managers on the part of the House agreeing to the conference receive them and take them to their House, which first receives and considers the conference report (5, 6254; 8, 3330).

The motion to not concur yields precedence to the motion to concur (8, 3779).

The stage of disagreement between the two Houses is reached when one informs the other of disagreement (4, 3475; 6, 756, 757). A bill with amendments of the other House is privileged after the stage of disagreement has been reached (4, 3149, 3150; 6, 756; 8, 3185, 3194).

The stage of disagreement having been reached, that motion which tends most quickly to bring the Houses into agreement is preferential, and so a motion to adopt a conference report takes precedence over a motion to recommit it (8, 3204).

A majority of the managers of a conference should represent the attitude of the majority of the House on the disagreement in issue, and on exceptional occasions the Speaker has passed over the ranking member of the committee in the appointment of conferees in order to conform to this practice (8, 3223).

Resignations of conferees are properly addressed to the President, but are acted on by the Senate, and, being accepted, the President appoints successors and directs the Secretary to notify the House (5, 6373-6376; 8, 3224, 3227).

The motion to instruct conferees is not in order after the conferees have been appointed (5, 6379-6382; 8, 3233, 3240, 3256).

The motion to instruct conferees is divisible if it contains more than one substantive proposition (74-2-7945, 7951).

Motions to instruct conferees may not include directions which would be inadmissible if offered as motions during its consideration (8, 3235); may not require conferees to report back amendments outside the subjects in disagreement between the two Houses (8, 3243, 3244).

Conference Reports

When conference results in disagreement, conferees reporting disagreement are thereby discharged (Cannon's Procedure, 4th Ed., 124).

Supplemental reports or minority views may not be filed in connection with conference reports (8, 3302).

Conference reports may not be considered when original bill and accompanying papers are not before the House (8, 3301).

When a conference report is called up only three courses are open: (a) agree, (b) disagree, or (c) recommit (5, 6546).

Conference reports may not be—

Tabled (5, 6538-6544).

Referred to committee (5, 6558).

Amended (5, 6534, 6535), except by concurrent resolution (5, 6536, 6537; 8, 3306-3308).

Recommitted, if House has already agreed (5, 6545-6553, 6609).

When called up for consideration the motion to agree is regarded as pending, and the motion to disagree is not admitted (2, 1473; 5, 6517; 8, 3300).

A conference report must be acted on as a whole and agreed to or disagreed to in entirety (5, 6472-6480; 8, 3304, 3305).

If either House disagrees to conference report the bill returns to position before conference was asked (5, 6526), and amendments in disagreement come up for consideration as originally (2, 1473; 5, 6525).

Clerical errors in conference reports agreed to by the House are corrected by proper enrollment of the bill (Cannon's Procedure, 4th Ed., 127).

The Speaker may rule out a conference report if it is shown that the conferees have exceeded their authority (Sec. 547; 5, 6409, 6410, 6414-6416; 8, 3256, 3264). The Senate amendments are then before the House de novo, and motions to send to conference are again in order (Cannon's Procedure, 4th Ed., 129).

A conference report may be recommitted to the committee of conference if the House has not, by acting on the report, discharged its managers (Sec. 550; 5, 6545-6553, 6609; 8, 3310).

PRECEDENTS ON CONSTITUTIONAL QUESTIONS

Lieutenant Governor T. W. Davidson refused to rule on the constitutionality of an amendment and stated that he would not rule on constitutionality of any amendment unless the particular part of the Constitution alleged to be violated had been carried forward in the Rules of the Senate (38 S.J. Reg. 702 (1923)).

A bill which enacts, amends, or repeals general law may contain an appropriation necessary to accomplish the main object of the bill and does not violate the single-subject limitation of Article III, Section 35, Texas Constitution (71 S.J. 2 C.S. 43-44 (1989)).

Presiding officers have traditionally refused to rule on points of order when raised against bills that may violate "substantive" constitutional provisions. A "substantive" provision is one that establishes policy or principle. "Procedural" provisions of the Constitution (those dealing with the legislative process) may be subject to parliamentary enforcement. (See Rule 5.15 notes)

Qualifications of Member

A person holding the office of district attorney may become candidate for Senator at a special election; and if elected, the Senate is judge of whether he is barred from serving as Senator by Section 19 of Article III of Constitution (44 S.J. 1 C.S. 103 (1935)).

Amending Statutes

The Legislature, in an appropriation bill, may prescribe the qualifications of an officer or employee, for whose salary an appropriation is made (45 S.J. Reg. 1189 (1937)).

A general law may not be amended by an appropriation bill (44 S.J. 3 C.S. 50 (1936)).

A section of a general statute cannot be amended except by a general bill that re-enacts at length and as amended the section amended (44 S.J. 3 C.S. 50 (1936)).

Donations by State

A bill granting and donating ad valorem taxes to the counties of the state for a period of five years for the purpose of constructing improvements to prevent soil erosion and for flood control, highway construction, etc.,

does not violate Section 51 of Article III, which provides that the Legislature shall have no power to make a grant of public moneys to any municipal or other corporation (45 S.J. Reg. 933 (1937)).

An amendment to permit a loan by the state in violation of Constitution is not in order (49 S.J. Reg. 613 (1945)).

An amendment making an appropriation for the conversion and enlargement of properties donated to the state by the Southwestern Medical Foundation into a College of Medicine of The University of Texas is not in violation of Section 6 of Article XVI of the Constitution prohibiting appropriations for private or individual purposes (51 S.J. Reg. 1127 (1949)).

Amendment by Reference

The mere inclusion or exclusion of a designated thing, individual, or class from the purview of a prior enactment does not constitute an "amendment by reference" within prohibition of Constitution. (Vernon's Ann. St. Const. Art. III, Sec. 36; S.W. Gas & Elec. Co. vs. State, 190 SW 2d, 132.)

Exclusive Powers of House or Senate

"The specific grant of a power to each House is an express denial of it to the courts or to precedent or subsequent Legislatures."

"There are certain matters which each House determines for itself and in respect to which its decisions are conclusive"; for example, passing on the qualification of members, the adoption of rules of procedure, the confirmation of appointments by the Senate, impeachment by House, trial of impeachment by Senate (35 S.J. 3 C.S. 48-49 (1917)).

Taxation

A bill to amend an article of the Revised Civil Statutes relative to tax on menageries, etc., held not a bill to raise revenue (36 S.J. Reg. 512 (1919)).

A Senate resolution that the "Senate go on record as favoring a tax of one dollar on each pint of whiskey" is not in order because it "[commits] the Senate on a measure which should originate in the House" (40 S.J. 1 C.S. 47 (1927)).

For opinion of the Attorney General relative to the adding by the Senate of a license tax to a bill providing for a gasoline tax, see (41 S.J. 1 C.S. 65-67 (1929)).

The Senate may amend a revenue bill from the House by adding a new field of taxation and so may place a tax on the sale of cigarettes by amending a bill imposing a privilege tax on persons producing natural gas; and a tax on cement may be added to a bill levying tax on peddlers (42 S.J. Reg. 893, 1622 (1931)).

A measure which merely relates to revenue and is not a "revenue-raising measure" may originate in the Senate (45 S.J. Reg. 249 (1937)).

A Senate bill amending a revenue-raising law is a revenue-raising measure itself and cannot originate in the Senate (42 S.J. 1 C.S. 696 (1931)).

An amendment, the adoption of which will make of a Senate bill a revenue-raising measure, is not in order (45 S.J. Reg. 249 (1937)).

An amendment which makes a revenue-raising measure of a bill further defining the term "carbon black" as used in the omnibus tax law is not in order (51 S.J. Reg. 1641 (1949)).

An amendment to levy tax on fuel used in aircraft offered to bill exempting from motor fuel tax law fuels used for non-highway purposes subjects the bill to the constitutional prohibition against revenue-raising measures originating in Senate and is not in order (49 S.J. Reg. 527 (1945)).

The Senate may amend a revenue bill from the House by adding a new field of taxation, and so may place a tax on cigarettes in a bill levying certain other taxes (42 S.J. Reg. 893 (1931)).

A bill which produces revenue as an incident to a different, non-revenue-producing purpose may originate in the Senate (68 S.J. Reg. 834-835 (1983); 71 S.J. 2 C.S. 44 (1989); 74 S.J. Reg. 2030-2035 (1995)).

Jurisdiction—Special Sessions

Article III, Section 40 of the Constitution reads as follows:

"When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor, and no such session shall be of longer duration than 30 days."

The courts have interpreted Article III, Section 40 to mean that:

(1) the intention of this section is not to require the Governor to define with precision the detail of the legislation but only in general ways, by this call, to confine the business to the particular subjects. Brown v. State, 32 Tex. Crim. 133, 22 S.W. 596, 601 (1893); Long v. State, 58 Tex. Crim. 209, 127 S.W. 208 (1910).

(2) it is not necessary or proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be. Brown v. State, 32 Tex. Crim. 133, 22 S.W. 596, 601 (1893).

(3) the Constitution does not require the proclamation of the Governor to define the character and scope of legislation which may be enacted at a special session but only in a general way to present the subjects for legislation, and thus confine the business to a particular field which may be covered in such ways as the Legislature may determine. Baldwin v. State, 21 Tex. 591, 3 S.W. 109 (1886); Deveraux v. City of Brownsville, 29 Fed. Rep. 742 (1887).

The gist of these opinions is that the Legislature is not held to strict interpretation of "subject" submitted in the Governor's call, but rather that it has the authority to determine the specific details of legislation as long as they come generally within the call. And it seems clear that the Governor can not restrict the Legislature to a particular bill or plan of legislation.

As an example, in Baldwin v. State, a defendant found guilty of failing to pay an occupation tax attacked the constitutionality of the statute imposing the tax on the ground that it was not included in the subjects contained in the proclamation convening the special session at which it was enacted. The proclamation stated that one of the purposes of the special session was "to reduce taxes, both ad valorem and occupation, so far as it may be consistent with the support of an efficient state government." The court found that the proclamation embraced the whole subject of taxation and that the Governor's proclamation merely called attention to the subject on which legislation was desired. Thus, the statute imposing a tax was upheld as being authorized by a proclamation that spoke only to reducing taxes.

In called sessions, the chair may employ two distinct procedures in dealing with bills embodying subjects not submitted by the Governor in the proclamation or in messages to the Legislature.

Under the first option, the chair gives all bills a first reading and refers them to the appropriate committees without regard as to whether they fit within the stated purposes of the called session. This procedure does not diminish the right of any member to later challenge a measure on the grounds that it is not contained within the call. The procedure does, however, activate the committee operations of the Senate and has proven in the past to expedite the consideration of subjects that the Governor may later submit to a called session.

Under the second option the chair reviews all bills filed with the Secretary of the Senate or received from the House, to

> determine if their subject matter has been submitted by the Governor. The chair will then admit to first reading only those that are so covered.
>
> It is generally conceded that if a bill, not within the Governor's call or later submissions, is passed by the Legislature and signed or filed by the Governor (not vetoed) it will become law.

A bill relating to a subject not within the Governor's call for a special session, upon being submitted for introduction, is out of order, and the chair may refuse to refer it to a committee (41 S.J. 5 C.S. 9, 14 (1930)).

A bill amending a law relating to a subject not within the Governor's call may not be introduced at a Called Session (44 S.J. 1 C.S. 63 (1935)).

A point of order as to the Senate's jurisdiction may be raised at any time, and a point of order against consideration of a bill at a Called Session on the ground that it relates to a subject not submitted for consideration at that session or a point of order that the bill is a revenue-raising measure that cannot originate in the Senate, if upheld, prevents consideration by the Senate of any such bill (44 S.J. 2 C.S. 7 (1935)).

A bill to prohibit betting on races by pari-mutuel method and by other methods as well is within call of Governor for a special session "to outlaw and prohibit the so-called pari-mutuel betting or gaming on horse races at race tracks" (45 S.J. 1 C.S. 19-20 (1937)).

In case the chair holds a bill may not be introduced at a Called Session because it relates to a subject not submitted by the Governor and an appeal is taken from the ruling and the chair is not sustained, the bill may be introduced and considered by the Senate at that session (45 S.J. 2 C.S. 60 (1937)).

A bill revising appropriations already made comes within the Governor's call of a special session to "balance the budget, etc." (45 S.J. 2 C.S. 71 (1937)).

A concurrent resolution to permit suit against State is not in order at Called Session unless subject of resolution submitted by Governor (47 S.J. 1 C.S. 69 (1941)).

An amendment to authorize the use of a portion of certain revenues for the benefit of the M. D. Anderson Hospital for Cancer Research is not within the Governor's call for a special session "to make and to finance such appropriations as the Legislature may deem necessary . . . for the agencies and institutions for which appropriations were made by Chapter 553, Acts of the 51st Legislature, Regular Session," since no reference is made in said Chapter to said M. D. Anderson Hospital for Cancer Research (51 S.J. 1 C.S. 99 (1950)).

An amendment making an appropriation to be used principally for distributing surplus commodities to the state hospitals and special schools is within the Governor's call for a special session "to make and to finance such appropriations as the Legislature may deem necessary for the State hospitals and special schools." (51 S.J. 1 C.S. 79 (1950)).

The Senate while in called session may consider a concurrent resolution petitioning the Congress to propose a constitutional amendment (71 S.J. 1 C.S. 72 (1989)).

Local Bills, Constitutionality

The message of Governor Stevenson to the 49th Legislature, Regular Session, contains excerpts from and citations to a number of court decisions holding so-called "bracket bills" to be unconstitutional (49 S.J. Reg. 867 (1945)).

Uniform Tax Rule

Under the constitutional provision requiring all occupation taxes to be equal and uniform on same class, Legislature has power to classify subjects and court can only interfere when it is made clearly to appear that the attempted classification has no reasonable basis in the nature of businesses classified and that the law operates unequally upon subjects between which there is no real difference. (See Vernon's Annotated Constitution, Art. VIII, Section 1.)